

Application No. 09/991,389
Amendment "D" dated December 9, 2005
Reply to Office Action mailed November 3, 2005

REMARKS

The Final Office Action, mailed November 3, 2005, considered and rejected claims 1-18 and 49-65. Claims 1-9, 11-18, 52-54, 58-63 and 65 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. (U.S. Patent No. 5,721,827) in view of Carruthers et al. (U.S. Patent Application No. 2002/0128904). Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. and Carruthers et al. in view of Applicant Admitted Prior Art. Claims 49, 55, and 64 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, et al. and Carruthers, et al. in view of Wodarz, et al. (U.S. Patent No. 5,999,912). Claims 50 and 56 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al., Carruthers, et al., in view of Wodarz, et al., in view of Finseth et al. (U.S. Patent No. 6,813,775). Claims 51 and 57 were rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. and Carruthers et al. in view of Wodarz et al., in further view of Roseman (U.S. Patent No. 6,012,984).¹

By this paper, claim 1 has been amended and new claim 66 has been added, such that claims 1-18 and 49-66 remain pending, of which claims 1 and 11 are the only independent claims at issue. Support for the amendments is found in at least paragraph 38 and claim 4.

Initially, although it was not necessary to amend the claims to distinguish them over the art of record, the claims have been amended to further clarify limitations which were already present and to further define terms in the claims.

As recited in the claims, the present application is directed toward embodiments for delivering advertisement content to viewers according to an advertising plan. For example, claim 1 recites that advertising content is delivered to a viewer according to an advertising plan executed in a system having a processor. The recited method of claim 1 also includes receiving a schedule defining a time to display an advertisement, as well as a location and indicator of advertising type. An advertising weight is also received that is used to determine a frequency to

¹ Although the prior art status and some of the assertions made with regard to the cited art is not being challenged at this time, inasmuch as it is not necessary following the amendments and remarks made herein, which distinguish the claims from the art of record, Applicants reserve the right to challenge the prior art status and assertions made with regard to the cited art, as well as any official notice, which was taken in the last office action, at any appropriate time in the future, should the need arise, such as, for example in a subsequent amendment or during prosecution of a related application. Accordingly, Applicants' decision not to respond to any particular assertions or rejections in this paper should not be construed as Applicant acquiescing to said assertions or rejections.

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display the advertising during a period of time. In response to receiving this information, the system generates a data file defining, for each advertisement, the advertising type, weight, location and schedule for display, wherein defining the weight comprises defining an absolute weight for each committed advertisement that corresponds to a guaranteed impression frequency for displaying each said committed advertisement during the period of time, and defining a relative weight to each flexible advertisement that corresponds to a proportional allocation of remaining advertising inventory that can be used for displaying each said flexible advertisement. The method also includes delivering the advertisement content and the data file, including definitions of advertising type, absolute or relative weight, location and schedule for display, to at least one receiver and such that the advertisement is displayed according to the frequency defined by the weight of the advertisement within the defined period of time.

This same method is also incorporated within computer program product claim 11.

Although there are many distinctions between the existing claims (both independent and dependent) and the prior art, Applicants will focus on two of the distinctions, namely the recited weights and frequency corresponding to the displayed advertisements. With regard to the recited claim language provided above, it is clear that the advertising plan controls the frequency of displaying the advertisements, and that the frequency is based at least in part on the weights assigned to the committed and non-committed advertisements. It is also clear that the absolute weight assigned to committed advertisements corresponds to a guaranteed impression frequency for displaying each corresponding advertisement.

The cited art, however, fails to disclose or suggest any such use of weights for controlling frequency of advertising display.

In the last Office Action, it is generally acknowledged that Logan does not explicitly disclose 'that a weight is used to determine a frequency to display the advertisements or that an absolute weight corresponds to a guaranteed impression frequency, and such that the advertisements are displayed according to a frequency defined by the weights.' (See page 4). However, the Examiner has nonetheless indicated that Logan does mention weights and the weights are defined for the advertisements. (See page 3).

While Applicants generally agree that Logan mentions weights, the type of weights mentioned by Logan are completely different than the type of weights described in the application and recited in the claims. In particular, while the weights of the present invention

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correspond to a frequency for displaying an advertisement, as claimed, Logan's weights correspond to a priority match between a user's profile interests and a program category. (Col. 23, ll. 14-17).

To compensate for the failings of Logan in at least this regard, the Examiner has relied on Carruthers. However, Applicants respectfully submit that Carruthers also fails to disclose or suggest the claimed weights.

To more exactly address the Examiner's rejections, and to avoid confusion, some of the assertions made in the last Office Action will now be reproduced.

It was asserted, for example, on Page 4, that Carruthers discloses:

that the weight is used to determine a frequency to display the advertisement during the defined period of time as defined by an advertising plan. (Carruthers '01: para. [0034] – note the master delivery plan and the weighting mechanism)

wherein defining the weight comprises defining an absolute weight (Carruthers '01: para. [0068] – note a position ranking reads on an absolute weight because a ranking value is an specific value) for each committed advertisement (Carruthers '01: para. [0007]- note targeted advertising reads on committed advertising) that corresponds to a guaranteed impression frequency for displaying each said committed advertisement during the period of time, and defining a relative weight (Carruthers '01: para. [0073]- note means to determine relative importance with respect to the weightings) to each flexible advertisement (Carruthers '01: para. [0007]- note surplus advertising reads on flexible advertising) that corresponds to a proportional allocation of remaining advertising inventory that can be used for displaying each said flexible advertisement (Carruthers '01: para. [0034]- note the master plan weights all advertisements to be displayed); or

that the display of the advertisement is such that the advertisement is displayed according to the frequency defined by the weight within the defined period of time (Carruthers '01: para. [0034]- note the master delivery plan and the weighting mechanism and furthermore that it defines a period of time, e.g., daily).

Initially, it is unclear whether the Examiner is attempting to suggest that the weight (as defined in Logan) is used in Carruthers to determine a frequency. The reason for this unclarity is because the Examiner has pointed to Logan as disclosing a weight and then relies on Carruthers as teaching how weights are used, even though Carruthers actually never defines weights, but instead only mentions that "The order is based preferably both upon priority and some weighting mechanism that indicates how many impressions are needed by each campaign." (para. 34). Accordingly, if the Examiner maintains the same rejection in this regard, it is respectfully

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requested that the Examiner clarify the relationship that is being asserted between the Logan weight and the Carruthers weight.

Irrespective of the relationship between Logan and Carruthers, however, Applicants maintain their assertion that Carruthers and Logan both fail, alone and in combination to disclose or suggest a method that includes the use of weights to define and control the frequency of advertisement display, particularly when some of the weights are absolute weights that correspond to a guaranteed impression frequency, as claimed, particularly as recited in combination with the other claimed elements.

While it is generally acknowledged that Logan fails to disclose the foregoing, Carruthers also fails to disclose the use of weights and absolute weights that define and control the frequency in which advertisements are displayed.

It was asserted in the last office action that Carruthers does disclose these claimed elements in paragraphs 7, 34, 68 and 73. However, these passages fail to disclose that weightings are used to control the frequency in which advertisements are displayed. Instead, as mentioned above, the weighting appears to be directed at establishing a priority ordering in a queue for displaying the ads and for clarifying how many advertisements are desired.

Applicants specifically draw attention to the recited claim language requiring that the absolute weight of a committed advertisement corresponds to a guaranteed impression frequency for displaying said advertisement. Initially, Applicants submit that Carruthers does not appear to disclose or suggest any such embodiment that includes absolute weights for committed advertisements, particularly when considering that each committed advertisement is an advertisement that a provider has committed to broadcasting as part of an advertising campaign, and wherein each flexible advertisement is an advertisement that operates as a filler advertisement to be displayed when advertising inventory exists in excess of advertising utilized by the committed advertisement, as claimed.

Although Carruthers fails to disclose the foregoing, Applicants respectfully submit that even if Carruthers did disclose or suggest weighting to control advertising frequency, this teaching would not be compatible with the teachings in Logan.² In particular, Logan appears to teach away from embodiments requiring mandatory or guaranteed advertising frequency

² Applicants also submit that the combination of Logan and Carruthers is improper for at least the reasons asserted in the last amendment.

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inasmuch as Logan explicitly teaches the user has a great deal of discretion in bypass the advertising. See col. 9 and 10. In other words, Logan tries to get advertising to users by making it relevant and interesting to the user, (Abstract, Summary, Col. 9-10), rather than mandating when advertising will be displayed to a user. At the very most, Logan merely discloses that a suggested playback schedule can be provided to the user, having a recommended order. Col. 5. However, this teaching, in combination with the other teachings in Logan (regarding user discretion and control over advertisements) does not make Logan compatible with the claimed embodiments requiring guaranteed display frequencies of advertisements that a provider has committed to broadcasting, as claimed, even if Carruthers did teach this aspect (which it does not, for at least the reasons provided above).

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are not, therefore, anticipated or made obvious by Logan and/or Carruthers alone or in combination. The remaining references cited by the examiner do not compensate for the deficiencies of Logan and/or Carruthers³.

If for any reason the rejections to the claims are maintained, Applicants respectfully request that the Examiner more particularly show where Carruthers suggests absolute weights that correspond to a *guaranteed impression frequency for displaying each corresponding advertisement*, as claimed, (not just an order or rank in a queue from which the advertisements are obtained, or a total number of arbitrary advertisements placed during an overall period of time).

Although the foregoing remarks have been focused primarily on the independent claims, it will be appreciated that all of the rejections and assertions of record with respect to the independent claims, as well as the dependent claims, are now moot, and therefore need not be addressed individually. However, in this regard, it should be appreciated that Applicant does not necessarily acquiesce to any assertions in the previous Office Action that are not specifically addressed above, and hereby reserves the right to challenge those assertions at any appropriate time in the future, should it arise, including any official notice.

³ *Wahatz* is only cited for showing location defining a particular location on a screen and a display area. *Finseth* is only cited for showing an EPG that is an HTML target. *Roseman* is only cited for showing a game that is an HTML target.

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Although it is not necessary to address the dependent claims, Applicants will specifically address claim 10, which clarifies an embodiment in which the type of advertisement is defined as either a flexible or committed advertisement. The Examiner has relied on a combination of Logan, Carruthers, and AAPA to reject this claim. In this regard, Applicants respectfully submit that although the specification defines flexible and committed types of advertisements, it would not be obvious for either Logan or Carruthers to implement a method wherein the type of an advertisement is defined as either flexible or committed. The Examiner has relied on a motivation for fully filling a program schedule. However, this motivation does not require or necessitate the identification of flexible and committed advertisements, as claimed, particularly wherein the committed advertisements are advertisements that a broadcaster has committed to broadcasting as part of an advertising campaign, as further clarified by the amended claim language. If anything, Applicants respectfully submit that it would only be obvious to utilize advertising type identification in Logan and Carruthers that deals with a profile type characterization to find a match with the user profile. (Col. 2 & 5 of Logan and Paragraph 38 of Carruthers). Accordingly, the foregoing rejection appears to be based on improper hindsight reconstruction.

Applicants also point to claim 66, which recites many of the claimed elements of claim 4 in a mutually inclusive format.

In view of the foregoing, Applicants respectfully submit that the pending claims are allowable over the art of record. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 9 day of December, 2005.

Respectfully submitted,



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